Transnational Diversified and Lease U.S.A. and Integrated Systems, Joint and Single Employers and/or Alter Egos *and* Teamsters Local Union No. 696, affiliated with Interntaional Brotherhood of Teamsters, AFL–CIO. Cases 17–CA–17017 and 17–CA–17102

August 29, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

Upon charges and amended charges filed by Teamsters Local Union No. 696, affiliated with International Brotherhood of Teamsters, AFL–CIO (the Union) between October 18 and December 7, 1993, the General Counsel of the National Labor Relations Board issued an order revoking approval of, vacating and setting aside settlement agreement and order consolidating cases, and consolidated complaint on April 26, 1994, against Transnational Diversified, Lease U.S.A., and Integrated Systems, alleged joint and single employers and/or alter egos (Respondent Transnational, Respondent Lease U.S.A., and Respondent Integrated Systems, respectively, or jointly Respondent), alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although the Respondent initially filed an answer to the consolidated complaint, on July 19, 1994, it withdrew its answer.

On July 25, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On July 28, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that although the Respondent initially filed an answer to the consolidated complaint, the Respondent on July 19, 1994, withdrew that answer. Such a withdrawal has the same effect as the failure to file an answer, i.e., the allegations are considered to be admitted.[1]

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Respondent Transnational, a corporation with an office and place of business in Topeka, Kansas, has been engaged in business as a freight transportation broker. Respondent Transnational, in conducting its business operations, annually performs services valued in excess of $50,000 in states other than the State of Kansas.

At all material times Respondent Lease U.S.A., a corporation, with an office and place of business in Topeka, Kansas, has been engaged in the interstate transportation of freight. Respondent Lease U.S.A., in conducting its business operations, annually derives gross revenues in excess of $50,000 for the transportation of freight from the State of Kansas directly to points outside the State of Kansas.

At all material times Respondent Integrated Systems, a corporation with an office and place of business in Topeka, Kansas, has been engaged in the interstate transportation of freight. Based on a projection of its operations since about September 1, 1993, at which time Respondent Integrated Systems commenced its operations, Respondent Integrated Systems, in conducting its business operations, will annually derive gross revenues in excess of $50,000 for the transportation of freight from the State of Kansas directly to points outside the State of Kansas.

At all material times Respondent Transnational, Respondent Lease U.S.A., and Respondent Integrated Systems have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have common suppliers and share customers; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises.

Since about September 1, 1993, Respondent Transnational and Respondent Lease U.S.A. have utilized Respondent Integrated Systems as a disguised continuation of Respondent Transnational and Respondent Lease U.S.A.

Based on the conduct described above, Respondent Transnational, Respondent Lease U.S.A., and Respondent Integrated Systems are, and have been at all material times, alter egos and joint and single employers within the meaning of the Act.

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

We find that Respondent Transnational, Respondent Lease U.S.A., and Respondent Integrated Systems have each been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time city drivers, loaders, hostlers and over-the-road drivers employed by Respondent at its facility located at 700 N.W. Reo, Topeka, Kansas but excluding all dispatchers, guards, office clerical employees and supervisors as defined in the Act.

On August 17, 1992, the Union was certified as the exclusive collective-bargaining representative of the unit.

About November 1, 1992, Respondent Transnational and the Union entered into a collective-bargaining agreement covering employees in the unit effective by its terms from November 1, 1992, until November 1, 1995.

About September 1, 1993, Respondent Integrated Systems took over the operations of Respondent Transnational and Respondent Lease U.S.A., recognized the Union as the exclusive bargaining representative of the unit, and adopted the collective-bargaining agreement referred to above.

At all times since August 17, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about July 1, 1993, the Respondent has failed and refused to continue in effect all of the terms and conditions of the collective-bargaining agreement by failing to honor dues-deduction authorizations of unit employees and to remit such dues to the Union in accordance with article 3 of the agreement.

Since about October 1, 1993, the Respondent has failed and refused to continue in effect all of the terms and conditions of the collective-bargaining agreement by failing to pay insurance premiums for medical insurance in accordance with article 16 of the agreement.

Although the subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for purposes of collective bargaining, the Respondent engaged in the conduct described above without prior notice to the Union, without affording the Union an opportunity to bargain with the Respondent with respect to this conduct, and without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since July 1, 1993, to deduct union dues for employees who had executed dues-checkoff authorizations and to remit them to the Union in accordance with article 3 of the 1992–1995 agreement, we shall order the Respondent to deduct and remit union dues as required by the agreement and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since October 1, 1993, to pay the contractually required insurance premiums for medical insurance on behalf of its unit employees, we shall order the Respondent to restore the employees' medical insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Transnational Diversified, Lease U.S.A., and Integrated Systems, joint and single employers and/or alter egos, Topeka, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect all of the terms and conditions of the 1992–1995 collective-bargaining agreement with Teamsters Local Union No. 696, affiliated with International Brotherhood of Teamsters, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the unit described below, by failing to honor the employees' dues-deduction authorizations and to remit such dues to the Union in accordance with article 3 of the agreement, and failing to pay medical insurance premiums in accordance with article 16 of the agreement:

All full-time and regular part-time city drivers, loaders, hostlers and over-the-road drivers employed by Respondent at its facility located at 700 N.W. Reo, Topeka, Kansas but excluding all dispatchers, guards, office clerical employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms and conditions of the collective-bargaining agreement by deducting and remitting union dues for employees who have executed dues checkoff authorizations and by paying medical insurance premiums in accordance with articles 3 and 16 of the 1992–1995 agreement, and make the unit employees and the Union whole for its failure to do so since July 1 and October 1, 1993, respectively, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Topeka, Kansas, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of the 1992–1995 collective-bargaining agreement with Teamsters Local Union No. 696, affiliated with International Brotherhood of Teamsters, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the unit described below, by failing to honor the employees' dues-deduction authorizations and to remit such dues to the Union in accordance with article 3 of the agreement, and failing to pay medical insurance premiums in accordance with article 16 of the agreement:

All full-time and regular part-time city drivers, loaders, hostlers and over-the-road drivers employed by us at our facility located at 700 N.W. Reo, Topeka, Kansas but excluding all dispatchers, guards, office clerical employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms and conditions of the collective-bargaining agreement by deducting and remitting union dues for employees who have executed dues-checkoff authorizations and by paying medical insurance premiums in accordance with articles 3 and 16 of the 1992–1995 agreement, and WE WILL make the unit employees and the Union whole for our failure to do so since July 1 and October 1, 1993, respectively, with interest.

TRANSNATIONAL DIVERSIFIED AND LEASE U.S.A. AND INTEGRATED SYSTEMS, JOINT AND SINGLE EMPLOYERS AND/OR ALTER EGOS